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DECLARATION OF ALFRED E. D'ANCONA, III

EPA Region 5 Records Ctr.



226888

I, Alfred E. D'Ancona, III, declare:

1. I know all of the facts stated in this declaration of my own personal knowledge.
2. I am familiar with the parcel of land in the Streeterville area of Chicago bounded by East Ohio Street, North Fairbanks Court and East Grand Avenue having street addresses of 245-253 East Ohio and 242-256 East Grand Avenue. I will refer to this parcel as the "Ohio and Fairbanks Property."
3. The current owners of the Ohio and Fairbanks Property obtained it by bequest or inheritance from the estate of my maternal grandfather, Henry R. Levy, who died in 1971.
4. Any sources of excessive radioactivity that are contained in the soil underlying the Ohio and Fairbanks Property were deposited there long before my grandfather's death and transfer of the property to the current owners by bequest or inheritance, as the property has been paved since at least 1958.
5. The current owners of the property have exercised due care with respect to the substances on the Ohio and Fairbanks Property, in light of all relevant facts and circumstances, and have taken precautions against the foreseeable actions and omissions of third parties, while they have owned the land.
6. I first became familiar with the Ohio and Fairbanks Property as a child or young teenager when my grandfather showed it to me in the mid to late 1950s. At that time, the property was paved and operated as a parking lot and had a small building in its northwest quadrant (near the Ohio-Fairbanks intersection) that the parking lot attendants used. Between that building and the Ohio Street sidewalk was a small concrete island with one or two gasoline pumps from which the parking lot operator sold gasoline.
7. Henry Levy owned the Studebaker automobile dealership in Chicago for many years, but he sold it in the late 1950s. His only child, Jeanne D'Ancona, was my mother.
8. When Henry Levy died in 1971, his will was admitted to probate in Cook County. The Circuit Court of Cook County appointed my brother H. Richard D'Ancona ("Dick"), my father Alfred E. D'Ancona, Jr. and me as executors of his estate to administer and distribute his estate in accordance with his will.
9. When Henry Levy died, he owned a corporation named Henry R. Levy Company that previously had operated the Studebaker dealership, but, at the time of his death, owned real estate and securities. One of the parcels of real estate that Henry R. Levy Company owned was the Ohio and Fairbanks Property, which was then paved and leased to a tenant that operated a parking lot there. Attached as an exhibit is a photocopy of a 1958 survey of the property in the

files that I obtained as executor of the Estate of Henry R. Levy and retained as a trustee of the trusts that own the Ohio and Fairbanks Property. The survey shows that, more than twelve years before Henry Levy's death, the Ohio and Fairbanks Property was a parking lot and completely covered with crushed stone and macadam over pre-existing foundations, apparently foundations for structures that had been demolished. Records of Henry R. Levy Company that came into my custody as one of the executors of my grandfather's estate show that the Ohio and Fairbanks Property was leased to the parking lot operator at least as early as 1957.

10. When my brother Dick and I became executors of our grandfather's estate, we began to administer the lease of the Ohio and Fairbanks Property, pay the real estate taxes and generally look after the property. However, I performed most of the day-to-day duties in this regard as my brother lived in the San Francisco area and my father was retired. I have continued to perform such duties, either as executor or trustee of the owners of the Fairbanks and Ohio Property, from the time of my grandfathers' death to the present time.

11. The Ohio and Fairbanks property was, when my grandfather died, and continuously since his death has been, paved and clean and has had no debris or other indication that any waste was present on or about the property. Before 2001, I and the other executors and trustees had no knowledge and no reason to believe, that any subsurface soil on the property might be contaminated with any radioactive waste of any kind. My grandfather told me that before the property was a parking lot it had a horse barn on it, but I was unaware of any activities that might have resulted in deposit of any radioactive waste on or about the property.

12. Henry Levy's will provided that, after all debts, taxes and administration expenses were paid and certain specific bequests paid, the residue of his estate was to be allocated among four trusts. The will establishing the trusts was long and complicated, and I shall summarize below the principal provisions of the trusts.

(a) One of the trusts was to receive property worth \$500,000 with the income to go to Nanette Levy, his surviving spouse. Nanette was Henry Levy's second wife, and was not my grandmother. Upon Nanette's death the property in this trust was to pass to the other three trusts described in subparagraphs (b) and (c) below.

(b) A second such trust for my mother Jeanne L. D'Ancona was to receive half of the residue of Henry Levy's estate. Upon my mother's death any balance of her trust was to go to the trusts for my brother Dick and me described in subparagraph (c) below.

(c) The third and fourth such trusts for my brother Dick and me (the "primary beneficiary" of each of the two respective trusts) were each to receive one-fourth of the residue of Henry Levy's estate. Each of these trusts permitted distribution of income and principal among the primary beneficiary and certain of the primary beneficiary's relatives during his lifetime. Each of these trusts further provided that, upon the primary beneficiary's death, the primary beneficiary would have a limited power of appointment to direct, by a valid will admitted to probate, the distribution of the trust among Henry Levy's then living descendants either outright or in trust.

13. Specifically, section VI(c)(iii) of the Last Will of Henry R. Levy provided:

(iii) Upon the death of said HENRY RICHARD D'ANCONA, being the date of Distribution of the "HENRY RICHARD D'ANCONA TRUST", the entire balance of the "HENRY RICHARD D'ANCONA TRUST" shall be paid over and distributed to such of my then living descendants, HENRY RICHARD D'ANCONA's wife, if she shall then be living, and my descendants respective spouses, and in such manner, in trust or otherwise, as said HENRY RICHARD D'ANCONA shall appoint in his lawful Will, valid wherever probated.

14. My brother, my father and I decided that as executors we had a fiduciary duty to convert Henry Levy's property to produce income for beneficiaries of the trusts and to eliminate the double taxation on income from securities and real estate that federal tax laws then in effect imposed because the corporation owned the income-producing assets. Therefore, we liquidated and dissolved Henry R. Levy Company in 1972. As executors we caused title to the Ohio and Fairbanks Property to be transferred to a land trust at Exchange National Bank of Chicago, with the beneficial interest and power of direction held by the Estate. During the administration of the estate, we renewed the lease of the Ohio and Fairbanks Property to the parking lot operator for a term that I cannot now recall. The lease included a provision for payment of rent based in part on a percentage of revenues that the parking lot operator generated at the property.

15. By 1975, we had completed the administration of Henry Levy's estate and distributed its property to the trustees of the trusts described above. We distributed an undivided 50% beneficial interest in the land trust that held title to the Ohio and Fairbanks Property to each of the Trustees of the Alfred E. D'Ancona, III Trust under the Will of Henry R. Levy and to the Trustees of the H. Richard D'Ancona Trust under the Will of Henry R. Levy. The initial trustees of each trust were me, my brother and our mother, who has since died. In 1994, our attorney Lawrence R. Levin became a co-trustee of the Alfred E. D'Ancona, III Trust.

16. Sometime around the time when we completed administration of my grandfather's estate – I do not recall whether shortly before or after – the parking lot operator on the Ohio and Fairbanks property terminated filling station operations. I understood at the time that this was because a new large Amoco station competed directly across Ohio Street and the operator told me that he could make more money using the space for parking than for pumping gasoline. The pumps and a Texaco sign on the northeast corner of the property were removed at that time and the underground tanks were capped.

17. Except for removal of underground gasoline storage tanks in the northeast portion of the Ohio and Fairbanks Property in the 1993-94 time frame and related testing, the installation of two billboard-type signs in the early 1990's and investigation of subsurface conditions on the property since 2001 (both of which I shall describe below), the paving on the property has been intact continuously since before the death of Henry R. Levy in 1971, and no extraneous material of any kind has been deposited on or about the property.

18. In the late 1970s-early 1980s time frame, the City of Chicago announced that as part of the straightening of the Lake Shore Drive S Curve it desired to extend Columbus Drive across the Chicago River and would widen Fairbanks Court to accommodate the north-south traffic flow that the new Chicago River bridge would allow. At that time, the City instituted a proceeding to condemn a 17-foot strip along the west side of the Ohio and Fairbanks Property.

After some negotiation, the City paid the Alfred E. D'Ancona, III Trust under the Will of Henry R. Levy and the H. Richard D'Ancona Trust under the Will of Henry R. Levy for the strip that the City took. However, I do not recall the procedural details of how this was handled. After the City had purchased the strip, it widened Fairbanks Court. No excavation on the portion of the property that we retained was required.

19. In the mid-1980s, the property immediately to the west of the Ohio and Fairbanks Property was developed as an apartment building. The development required excavation to, but not over, the western boundary of the Ohio and Fairbanks Property.

20. In the early 1990s, I negotiated to sell the Ohio and Fairbanks Property. In anticipation of one potential transaction (which did not take place) a Phase I Environmental Site Assessment was performed for the prospective purchaser and a copy of the report was provided to me. The report did not mention any radioactive waste on or about the Ohio and Fairbanks Property, but did reveal the advisability of checking the possibility of leaks from underground gasoline storage tanks. As a follow-up to that situation, I had the soil and underground storage tanks on the Ohio and Fairbanks Property checked. The tanks were removed in February 1994 by RTE Environmental Solutions, Inc. under supervision of Miller Environmental Management, Inc. (which I hired) and the City of Chicago Department of Environment. According to the report that Miller Environmental Management, Inc. prepared and I signed, 50-75 cubic yards of overburden material was removed from the excavation, but was replaced after removal of the tanks and supplemented with additional backfill. The excavation area was then repaved.

21. In October 1994, my brother Dick D'Ancona died. I was one of the executors of his estate. In Dick's last will, he exercised the power of appointment under the Will of Henry R. Levy and directed that the H. Richard D'Ancona Trust under that will be distributed to a trust known as the H. Richard D'Ancona Children's Trust, Dated June 3, 1994, of which my wife Terri R. D'Ancona and I are co-trustees. Specifically, Article IV of my brother Dick D'Ancona's last will, probated in California, provided in pertinent part:

ARTICLE IV

Exercise of Power of Appointment

Under the Last Will of my late grandfather, HENRY R. LEVY ("My Grandfather") I have a limited power of appointment with respect to the HENRY RICHARD D'ANCONA TRUST created thereunder (the "Limited Power of Appointment"). In the Event that the HENRY RICHARD D'ANCONA CHILDREN'S TRUST, executed by me on June 3, 1994, before the execution of my Last Will, under which ALFRED E. D'ANCONA, III of Chicago ("ALFY") and TERRI R. D'ANCONA of Chicago ("TERRI") are currently acting as co-trustees, shall be in existence on the date of my death, then I hereby EXERCISE said Limited Power of Appointment, and I APPOINT all property subject thereto, subject to the restrictions on said Limited Power of Appointment, to the Trustees of the HENRY RICHARD D'ANCONA CHILDREN'S TRUST, to be held, administered and disposed of as a separate trust or trusts, exempt or nonexempt, as the Trustees shall determine in their sole and absolute discretion....

22. Since Dick D'Ancona's death and Mr. Levin's becoming trustee of the Alfred E. D'Ancona, III Trust under the Will of Henry R. Levy in 1994, the owners of the Ohio and Fairbanks Property have been, and now are:

(a) as to a 50% undivided interest, the H. Richard D'Ancona Children's Trust, Dated June 3, 1994, of which my wife, Terri R. D'Ancona, and I are co-trustees; and

(b) as to a 50% undivided interest, the Alfred E. D'Ancona, III Trust under the Will of Henry R. Levy, deceased, of which Mr. Levin and I are co-trustees.

Legal title to the Ohio and Fairbanks property is now held by LaSalle Bank N.A. as Successor Trustee to the American National Bank and Trust Company of Chicago, a National Banking Association, not personally but solely as Trustee under Trust Agreement Dated October 27, 1976 And Known As Trust Number 39369. American National Bank took over the title-holding land trust from Exchange National Bank, which held that position during the administration of my grandfather's estate.

23. In 2001, I negotiated concerning a possible transaction involving the Ohio and Fairbanks Property with Draper and Kramer, Incorporated. During discussions with Draper and Kramer, I learned that representatives of the U.S. Environmental Protection Agency ("EPA") were investigating the possible presence of materials that would present radioactivity hazards if exposed in subsurface soils underlying nearby portions of the Streeterville area. Draper and Kramer and I (on behalf of the trusts that own the Ohio and Fairbanks Property) engaged Conestoga-Rovers & Associates ("CRA") to perform an environmental assessment of the property including a thorough investigation of any sources on the property of radioactivity exceeding background levels. CRA's assessment revealed the presence on the property of such sources of radioactivity, particularly in the southwest corner. I understand that Mr. Bruce Clegg of CRA has provided the findings of that investigation to representatives of EPA in Chicago.

24. I also worked with my attorneys and Draper and Kramer's attorneys at Bell Boyd & Lloyd LLC to initiate discussions with Kerr McGee Chemical Corporation, (which I understand is a successor by merger to the company that generated the sources of abnormal radioactivity in the Streeterville area) and the appropriate regulatory authorities, on a plan to remove those sources of radioactivity from the Ohio and Fairbanks Property. Since learning of the possible presence of radioactive materials beneath the pavement of on the site, I have taken care to prevent any activity that might expose subsurface soils except for testing by or under the supervision of CRA.

25. I understand that the EPA is now considering what steps to take (and/or what steps to approve the current property owners, Draper and Kramer and Kerr McGee taking) in regard to removal of the sources of excessive radioactivity in subsurface soils on the Ohio and Fairbanks Property. I am submitting this declaration to the EPA for its consideration in connection with my claim that the current owners of the Ohio and Fairbanks Property qualify as "innocent landowners" under the applicable statute and are not liable for cleanup costs or obligations.

26. In support of my claim that the current owners of the Ohio and Fairbanks property qualify as "innocent landowners", this declaration demonstrates the following:

(a) The release of radioactive materials was caused solely by a third party long before the transfer of the Ohio and Fairbanks Property to its current owners;

(b) The current owners received the Ohio and Fairbanks Property by bequest and/or inheritance from my grandfather, Henry Levy;

(c) Even if the current owners had not received the Ohio and Fairbanks Property by bequest and/or inheritance, the current owners (i) did not know or had no reason to know that radioactive materials were deposited on the property and (ii) made the appropriate inquiry into previous ownership and uses given the facts and circumstances and their lack of specialized knowledge;

(d) At all times in light of the facts and circumstances, the current owners exercised due care with respect to the radioactive materials; and

(e) At all times in light of the facts and circumstances, the current owners took precautions against the foreseeable acts and omissions of third parties and any foreseeable resulting consequences.

I declare under penalty of perjury under the laws of the State of Illinois that the foregoing is true and correct.

Executed at Chicago, Illinois on January 18, 2003.



Alfred E. D'Ancona, III